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EVANSTON INSURANCE COMPANY,  
MARKEL SERVICE, INC., MARKEL WEST, INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

WINSTAR PROPERTIES, LLC, a limited liability company; and MANHATTAN MANOR, LLC, a California Limited Liability company,

## Plaintiffs,

vs.

EVANSTON INSURANCE  
COMPANY, an Illinois corporation;  
MARKEL SERVICE, INC., a Virginia  
corporation; MARKEL WEST, INC., a  
California corporation; and DOES 1  
through 50, inclusive.

### Defendants.

Case No.: 2:18-cv-09989-JFW-KS

**JOINT STATEMENT OF  
COUNSEL FOLLOWING LOCAL  
RULE 7-3 CONFERENCE RE:  
PLAINTIFFS' MOTION TO  
REMAND UNDER 28 U.S.C. §  
1441(b) (DIVERSITY)**

1 Plaintiffs WINSTAR PROPERTIES, LLC (“Winstar”) and MANHATTAN  
2 MANOR, LLC (“Manhattan Manor”) (collectively, “Plaintiffs”) and defendants  
3 EVANSTON INSURANCE COMPANY (“Evanston”), MARKEL SERVICE, INC.  
4 (“Markel Service”), and MARKEL WEST, INC. (“Markel West”) (collectively,  
5 “Defendants”) respectfully submit the following Joint Statement pursuant to Local  
6 Rule 7-3 in connection with Plaintiffs’ Motion to Remand:

7 1. Defendants removed this action from Los Angeles County Superior  
8 Court to the Central District. Plaintiffs are seeking remand based on lack of diversity  
9 among the parties.

10 2. On December 20, 2018, counsel for Plaintiffs, Sara A. McClain of the  
11 law firm Abir Cohen Treyzon Salo LLP, and counsel for Defendants, Margret G.  
12 Parke of the law firm Gordon Rees Scully Mansukhani, LLP, met in person to meet  
13 and confer regarding Plaintiffs’ Motion to Remand in accordance with Judge Walter’s  
14 standing order. This meeting took place at the Century City offices of Plaintiffs’  
15 counsel, located at 1901 Avenue of the Stars, Suite 935, Los Angeles, California,  
16 90067. Lead counsel for Defendants, Matthew S. Foy, participated in the meet and  
17 confer meeting by telephone. Lead counsel for Plaintiffs, Boris Treyzon, also  
18 participated in the meeting. The meeting began at 11:00 a.m. and ended at 1:20 p.m.  
19 During the meeting, counsel for the parties discussed Defendants’ Motions to Dismiss  
20 as well as the Motion to Remand that Plaintiffs will be filing.

21 3. Prior to the meeting, Plaintiffs’ counsel sent a lengthy email to  
22 Defendants’ counsel outlining Plaintiffs’ argument in support of its Motion to  
23 Remand, including a discussion of applicable law and facts.

24 4. The central issue for Plaintiffs’ Motion to Remand is whether the non-  
25 diverse defendant, Markel West, is properly joined as a defendant.

26 5. Plaintiffs contend that the non-diverse defendant, Markel West, is  
27 properly joined as a defendant. Plaintiffs contend they have alleged sufficient facts

1 indicating the probability of liability against Markel West for breach of contract, bad  
2 faith, violation of Business and Professions Code § 17200, and negligent  
3 misrepresentation against an individual adjuster. Moreover, if given leave to amend,  
4 Plaintiffs could allege additional facts supporting the causes of action against Markel  
5 West.

6. Plaintiffs contend there is sufficient evidence in the policy and the  
7 allegations to establish the potential for liability against Markel West for breach of  
8 contract, bad faith, and UCL violations based on a joint venture theory of liability.

7. Markel West denies being a joint venture with the other defendants.  
Markel West disputes any liability in connection with Plaintiffs' claims for breach of  
contract or breach of the implied covenant of good faith and fair dealing because they  
are not parties to the at-issue insurance policy. Plaintiffs contend, however, that  
Markel West can be liable for breach of contract and breach of the implied covenant  
based on a joint enterprise theory. Markel West disputes Plaintiffs' position in this  
regard based on California law, the at-issue insurance policy issued by Evanston, and  
the relationship between Evanston and Markel West. Despite a thorough discussion  
of Plaintiffs' complaint and allegations, the case law, and the facts, counsel for the  
parties were unable to resolve their respective positions with respect to Plaintiffs'  
claims for breach of contract and breach of the implied covenant of good faith and fair  
dealing.

8. Markel West also disputes any liability in connection with Plaintiffs'  
claim for violation of Business & Professions Code section 17200. Counsel for the  
parties thoroughly discussed their respective positions regarding the merits of this  
claim based on Plaintiffs' allegations and California law and were unable to resolve  
their respective positions with respect to this claim.

9. Plaintiffs contend Markel West is liable for negligent misrepresentation  
based on statements Markel West made to Plaintiffs regarding coverage under the

1 insurance policy and that sufficient allegations are pled in the complaint to support  
2 liability for this cause of action. Plaintiffs primarily rely on the holding of Bock v.  
3 Hansen, 225 Cal.App.4th 215, 228 (2014) which permits an insured to maintain a  
4 cause of action for negligent misrepresentation against an adjuster for  
5 misrepresentations regarding coverage. Markel West disputes any liability in  
6 connection with Plaintiffs' claim for negligent misrepresentation. It is the position of  
7 Markel West that it faces no liability in connection with Plaintiffs' claim under  
8 California law in light of the fact that they provide claims administration or claims  
9 adjustment services and owe no duty under California law. All Defendants maintain  
10 that Plaintiffs have not and cannot allege the elements necessary to state a claim for  
11 negligent misrepresentation with the specificity required under California law.  
12 Counsel for the parties thoroughly discussed Plaintiffs' allegations relating to their  
13 negligent misrepresentation claim, and applicable California law, and were unable to  
14 resolve their respective positions with respect to this claim.

15 10. As a result of their different positions, counsel for the parties were unable  
16 to resolve the issues raised in Plaintiffs' Motion to Remand and were otherwise unable  
17 to resolve the issues raised by Plaintiffs in their complaint.

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11. In light of the foregoing, Plaintiffs intend to file a motion to remand this action to state court and will do so in accordance with the Court's Order of December 7, 2018, on or before December 31, 2018.

Dated: December 24, 2018

**ABIR COHEN TREYZON SALO,  
LLP**

By: /s/ Boris Treyzon

Boris Treyzon  
Douglas R. Rochen  
Sara A. McClain  
Attorneys for Plaintiffs  
**WINSTAR PROPERTIES, LLC** and  
**MANHATTAN MANOR, LLC.**

Dated: December 24, 2018

**GORDON & REESE LLP**

By: /s/ *Matthew S. Foy*

Matthew S. Foy  
Margret G. Parke  
Attorneys for Defendants  
EVANSTON INSURANCE  
COMPANY, MARKEL SERVICE,  
INC., and MARKEL WEST, INC.

## **ATTESTATION OF E-FILED SIGNATURES**

I, Matthew S. Foy, am the ECF user whose ID and password are being used to file this Joint Report RE Meet and Confer. In compliance with Local Rule 5-4.3(a)(2)(i), I hereby attest that Boris Trevzon, attorney for plaintiffs Winstar Properties, LLC and Manhattan Manor, LLC, has concurred in this filing.

Dated: December 24, 2018

/s/ Matthew S. Foy

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Matthew S. Foy